IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

Crl.MC.No. 2346 of 2007(Y)

CP.35/2007 of JUDL. MAGISTRATE OF FIRST CLASS COURT, NEDUMKANDOM
CRIME NO.119/03 OF UDUMBANCHOLLA EXCISE RANGE

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PETITIONER: ACCUSED

RADHAKRISHNAN, S/O RAGHAVAN,
MADHUMALAYIL VEETTIL, KOOTTAR KARA,
KARUNAPURAM VILLAGE, UDUMBANCHOLLA TALUK,
IDUKKI DT.

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
DIRECTOR GENERAL OF PROSECUTIONS,
HIGH COURT OF KERALA, ERNAKULAM.

2. RANGE OFFICER,
UDUMBANCHOLLA EXCISE RANGE,
IDUKKI DT.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2346 of 2007

Dated this the 23rd day of July, 2007

O R D E R

The petitioner faces indictment in a prosecution under the Abkari Act. The petitioner was allegedly found to be in possession of 1.5 litres of arrack. Final report has now been filed. Cognizance has been taken. The committal proceedings as C.P.No.35 of 2007(and not C.P.No.358 of 2003 as shown in the petition) before the Judicial Magistrate of the First Class, Nedumkandom has been registered. Consequent to non appearance of the petitioner, a warrant of arrest has been issued against the petitioner.

2. According to the petitioner, he is innocent. His absence was not wilful. No notice or summons of the court was served on him. The petitioner is willing to surrender before the learned Magistrate and co-operate with the court for the expeditious disposal of the case. But he apprehends that his application for bail may not be considered by the learned Magistrate in accordance with law (in compliance with the directions in **Sukumari v. State of Kerala** [2001(1) K.L.T 22]), on merits and expeditiously.

3. I find no merit in the prayer to invoke the powers under Section 482 Cr.P.C. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the

circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same in the light of the decision in **Sukumari v. State of Kerala** [2001(1) K.L.T 22] and **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339]. No special or specific direction appears to be necessary.

4. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-